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PART I. MEDICAL ADMINISTRATION ACTIVITIES

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RESCISSIONS

The following material is rescinded:

1. Rescissions

a. Circular/Directives

10-92-079
10-92-114

b. Program Guides

G-12, M-1, Part I

2. Partial Rescissions

a. Manuals

Partial rescission: M-1, part I, chapter 1, delete Section II, dated August 31, 1983
Partial rescission: M-1, part I, chapter 1, delete Section I, dated September 27, 1985

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(i) A certification from both the Director and COS that the contracting Officer conducted or controlled all contract negotiations and that there were no discussions between VA officials and the contractor's personnel about the contract at which the contracting officer was not present.

(ii) A statement from the Director that no person who participated in negotiating the contract on VA's behalf had any relationship with the contractor, or

(iii) A statement from the Director specifying all the relationships with the contractor which persons who participated in negotiating the contract on VA's behalf had; and

(iv) The written certification from the contracting officer required by FAR 3.104-9(c)(1)(i) for contracts or contract modifications exceeding $100,000 that, to the best of his or her knowledge and belief, such officer has no information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement, or

(v) The written certification by the contracting officer required by FAR 3.104-9(c)(1)(ii) for contracts or contract modifications exceeding $100,000 containing any and all information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement.

(vi) A summary of all elements of justification required to be met pursuant to subparagraph a certified by the Director and contracting officer. Mere conclusive statements are not sufficient. Information and efforts supporting conclusions must be summarized. Supporting records must be maintained at the medical facility.

(vii) A description of current and proposed workloads, current and proposed staffing, proposed clinic hours or estimated quantity of time of services and a clear description of the services required by the contract.

(b) Cost comparison data and salary data from the affiliated medical school (Non-Competitive).

(c) Certified cost or pricing data and a cost and/or price analysis for solicitations anticipated to exceed $100,000.

(d) Results of audits performed by HHS or DCAA on solicitations anticipated to exceed $500,000.

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(e) The solicitation, prepared in accordance with OA&MM's uniform contract formats for SMS contracts, dated July, 1992 or subsequent formats.

(f) A price negotiation memorandum for the proposed contract.

(g) Documentation of approval of individual or class deviation(s) from standard VAAR/FAR clauses, if applicable.

o. Contract Modifications

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The services specified in Sections B, C, and H of scarce medical specialist contracts may be changed by written modification. If the modification does not reflect a decrease in cost, the modification will be prepared by the contracting officer and, prior to becoming effective, shall be approved by the Under Secretary for Health, or designee.

34.03 CONTRACT REVIEW

a. Upon receipt of a proposed solicitation package, the Regional COS will be responsible for review of the solicitation to ensure that the proposed contract service is consistent with the facility mission and plan, and with the VHA (Veterans Health Administration) National Healthcare Plan. The Regional COS will complete and document this review within 5 workdays. If the Regional COS determines that the proposal does not fit the facility mission and plan, the Regional COS may return the proposal to the facility as disapproved. If the Regional COS determines that the proposal is consistant with the facility mission and plan, the proposal will be forwarded to the Medical Sharing Office (181), with any comments. Review by District Counsels prior to submission of the contract to either the Regional COS or to VA Central Office is not necessary.

b. The Medical Sharing Office (181) is responsible for coordinating contract review, correspondence preparation, and interpretation of VHA policy on scarce medical specialist contract issues.

c. The Medical Sharing Office will coordinate review of contracts with assistance from appropriate VA Central Office program offices. The Medical Sharing Office will request;

(1) A technical review from Acquisition Policy and Review Service (95B), VA Central Office, for all competitive contracts valued at or above $50,000 and for all non-competitive contracts valued at or above $200,000, and

(2) Of all contracts, a review by the Office of the General Counsel.

d. VA Central Office program offices will review contracts for content, clinical relevance, and pricing and will return comments and concurrences to the Medical Sharing Office. Once concurrences are received from all VA Central Office offices, the Medical Sharing Office will prepare the response back to the facility for the signature of the appropriate Regional Director (13). Any VA Central Office reviewing a contract may request information from the facility on a proposal. Any reviewing office also may request the contract be placed on the agenda for the next VA Central Office Medical Sharing Committee meeting for discussion by the full committee. The Medical Sharing Office will place contracts on the agenda for the full committee in

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cases where there is significant conflict between comments returned by different program offices. The VA Central Office Medical Sharing Committee shall make recommendations and resolve issues as necessary.

e. Appendix 1 contains a copy of the checklist used by reviewers in examining proposed solicitations. Contracting officers should use this checklist or subsequent checklists as updated by the Medical Sharing Office for local review prior to submitting the package for VA Central Office review. The Medical Sharing Office may be called to obtain an up-to-date copy of the checklist. Generally, VA Central Office review will be completed within 75 days. Complex agreements or those which raise matters of law or

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policy may require additional time for review. VA Central Office review may result in approval, conditional approval (i.e., approval provided that the facility make specific changes to the proposed contract), or disapproval. Contracts which are conditionally approved or are disapproved will be returned to the facility with appropriate comments and recommendations. Facilities must make all recommended changes. Difficulties encountered in completing the required revisions shall be discussed with the Medical Sharing Office. The Medical Sharing Office will consult OA&MM, General Counsel and/or the program office(s) as required.

f. Only after VA Central Office approval is obtained can the proposed contract be executed by the contracting officer. A copy of all executed contracts and the contracting officer certificate if required by the Procurement Integrity Regulation (48 CFR § 3.104-9(c)(2)) shall be mailed to the Medical Sharing Office within 5 days after the award. The submission shall also contain a certification statement signed by the Director, that all revisions contained in the technical/legal review have been incorporated. If all required revisions are not made, the contract lacks the required VA Central Office approval and cannot be executed by the VA medical center. On a case-by-case basis, solicitations with significant deficiencies will be returned without approval. The Medical Sharing Office is responsible for reviewing executed contracts to ensure that required revisions have been incorporated and will report results of this review to the Medical Sharing Committee.

34.04 CONTRACT PERFORMANCE MONITORING

a. Section H of the solicitation shall contain a detailed description of the monitoring procedures used by the VA medical center to ensure contract compliance. The description must be complete enough for the VA Central Office reviewer to determine that an adequate contract monitoring process will be established. These procedures must be able to demonstrate through time and attendance logs, surgical room records, minutes of meetings, sign-in/sign-out sheets or other appropriate records, that services called for under the contract have been received by the VA medical center. This description shall also identify the VA official(s) by title, responsible for verifying contract compliance. After contract award, any incidents of contractor noncompliance as evidenced by the monitoring procedures shall be forwarded immediately to the contracting officer.

b. Contract performance monitoring is the responsibility of the VA medical center. The proposed contract should also include a description, in writing, of the facility's record-keeping procedure as it relates to the contract. Documentation of services performed should be reviewed in order to certify payment. The medical center should perform periodic spot checks and document with the using service to ensure that records are monitored, and tracking

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procedures are followed. The using service must furnish a statement in writing to the contracting officer at close out of the contract to include a summary of contractor actions and a statement that all requirements of the contract were fulfilled as agreed.

c. A summary evaluation of contractor performance, based upon the compliance or noncompliance of contract requirements as evidenced under the monitoring procedure, shall be forwarded by the monitoring official to the contracting officer prior to exercising any option year. The contracting officer shall forward a copy of the summary evaluation to the Medical Sharing Office with the copy of the Supplemental Agreement and Section B of the contract within 5 days of exercising the option.

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d. Conflict of interest provisions apply to contract monitoring (see par. 34.01f). A government employee who is also employed by a contractor may not certify bills for payment. This should be done by a knowledgeable individual who is not an employee, officer, director, or trustee of the contractor and who does not have a financial interest in the contract.

SECTION II. SHARING SPECIALIZED MEDICAL RESOURCES, FACILITIES, EQUIPMENT AND PERSONNEL

34.05 SHARING PROGRAM TERMINOLOGY

Some of the terms defined in the following paragraph are not discussed in the Section, however they are included as they impact on sharing, or are alternate methods of accomplishing sharing.

a. Specialized Medical Resources. Medical resources (equipment, space, or personnel), which, because of cost, limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use.

b. Sharing Agreement. A written agreement between a VA (Department of Veterans Affairs) health care facility and other health care facilities (including organ banks, blood banks, or similar institutions), research centers, and medical schools, to buy, sell, or exchange the use of specialized medical resources. The terms "sharing agreement" and "contract" are used interchangeably in this Manual Section.

c. Sharing. Generalized term for the relationship created by mutual use and exchange of use contracts.

d. Mutual Use Contract. When one health care facility either purchases or sells the use of specialized medical resources under a sharing agreement with another health care facility.

e. Exchange of Use Contract. When two health care facilities provide each other specialized medical resources under a single contract.

f. Health Care Facility. When referring to non-VA facilities, this term includes hospitals (public or private), clinics, medical schools, blood banks, organ banks or other similar establishments, as well as research centers.

g. Clinic. An organized medical facility where a group of medical personnel provides health care to patients.

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h. Research Center. An institution (or part of an institution), whose primary function is research, training of specialists, and demonstrations. In connection with these activities, it provides specialized, high quality diagnostic and treatment services for inpatients and outpatients.

i. Period of Contract. A fixed time duration of an agreement which has beginning and ending dates.

j. Modifications. Changes to contracts, such as deletions or additions of medical services, procedures, prices, treatment, etc.

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k. VAAR (VA Acquisition Regulation). VAAR implements and supplements the Federal Acquisition Regulation. (Issued by VA) See 48 CFR (Code of Federal Regulations) Chapter 8.

l. FAR (Federal Acquisition Regulation). FAR is derived from public law. (Issued by GSA (General Services Administration)) See 48 CFR 1.

m. Cross-Servicing Agreement. A Cross-Servicing Agreement between Federal agencies provides goods and services authorized by the Economy Act (31 U.S.C. (United States Code) 1535). (See MP-2, subch. E., pt. 108-77 and VAAR 817.5.)

n. Revocable License

(1) Authority to issue VA-owned personal property. Examples: Radio communications equipment, research equipment, renal dialysis equipment, typewriters, etc. (Ref. MP-2, subch. E, sec. 108-27.52)

(2) Authority to establish a license for the use of VA-owned real property. Examples: Therapeutic swimming pool, athletic field, and auditorium. (Ref. MP-3, Pt. II, Ch. 4.)

o. Lease. An agreement by which one health care facility relinquishes the right to immediate possession of property while retaining ultimate legal ownership and makes available to another health care facility the use of and possession of space and/or medical equipment for a predetermined period of time.

34.06 GENERAL

a. The basic concept underlying the sharing of specialized medical resources is the improvement of the quality of hospital care and medical services provided to eligible veterans by authorizing VA facilities to enter into agreements with non-VA health care facilities to facilitate the availability of unusual or costly medical resources which otherwise might not be available.

(1) The concept of sharing to avoid duplication of costly medical resources can result in efficiency and economy of operations.

(2) The use of sharing agreements for specialized medical resources is strongly encouraged and should be given consideration in preparing a VA health care facility's short- and long-range plans.

b. Under the provisions of 38 U.S.C. Section 8153, VA may contract with non-VA health care facilities (including public or private hospitals, clinics, blood banks, organ banks or similar institutions), research centers, or

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medical schools in a cooperative effort to share the use of specialized medical resources. This is accomplished through mutual use and exchange of use contracts (See par. 34.08).

c. Specialized Medical Resources are medical resources (whether medical equipment, space, or personnel) which, because of cost, limited availability or unusual nature, are either unique in the medical community, or are subject to maximum utilization only through sharing of those resources.

d. VA health care facility Directors should be alert to developments in the medical care field and in their respective medical communities, and use initiative and

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resourcefulness when the sharing concept can be employed effectively within the limits of the agency's statutory authority in the management of the VA medical care program. To achieve this end, a close working relationship with community planners is encouraged.

e. In no case, will the use of a sharing agreement for specialized medical resources result in the denial or delay of care for an eligible veteran or other VA beneficiary.

34.07 AUTHORITY TO SHARE

The basic authority for sharing specialized medical resources is 38 U.S.C. 8153, as amended. Under provisions of the law, VA medical centers and clinics having specialized medical resources (as defined in par. 34.05(h)) which are not maximally utilized, can enter into contracts to make such excess capacity available to the community and thereby eliminate the need of the health care facilities to establish a duplicate resource. Conversely, under this contracting authority, VA can obtain a similar type of resource in the community for care and treatment of veterans. Agreements under which VA medical centers would "share" specialized medical resources can be accomplished only when there will be no reduction in service to eligible veterans and provision is made for reimbursement.

34.08 MUTUAL USE AND EXCHANGE OF USE CONTRACTS (38 U.S.C. 8153)

a. There are three contract formats that are used for sharing agreements:

(1) Mutual use of specialized medical resources provided to a VA health care facility (VA purchases medical resources from a health care facility).

(2) Mutual use of specialized medical resources provided by a VA health care facility (VA sells medical resources to a non-VA health care facility).

(3) Exchange of use of specialized medical resources (VA buys and sells medical resources in conjunction with a non-VA health care facility). Under an exchange of use agreement, the services sold do not have to equal the services bought in either cost or quantity and attempts to balance them should be avoided. Net payment procedures may be used if provided for in the terms of the individual contract.

b. VAAR Subpart 815.7 defines the authority for negotiation of a mutual use or exchange of use sharing agreement. The solicitation formats are published and revised by the Office of Acquisition and Materiel Management (95B).

34.09 VA CENTRAL OFFICE OVERSIGHT

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a. The Medical Sharing Office (166) under the direction of the Associate Chief Medical Director for Administration (16), provides VA Central Office oversight of all sharing agreements for specialized medical resources and is responsible for:

(1) Coordinating contract reviews;

(2) Corresponding with VA facilities;

(3) The development, implementation and interpretation of sharing policy; and

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(4) The collection and analysis of data pertaining to sharing activities submitted by all VA health care facilities at the end of each fiscal year for the mandated congressional report, 38 U.S.C. Section 8153(e). (See Par. 34.16).

b. The Medical Sharing Committee is responsible for the disposition of complex sharing agreements and interim authorities or those that raise matters of law or policy, and for making recommendations for needed policy or procedural changes in the VA Sharing Program to the Medical Sharing Office.

(1) The Medical Sharing Committee is chaired by a VA Central Office physician appointed by the Associate Deputy Chief Medical Director for Clinical Programs (11).

(2) The committee meets twice a month.

(3) Medical Sharing Office staff provide technical and administrative support to the Committee.

(4) Minutes of each meeting are maintained by the Medical Sharing Office.

34.10 ESTABLISHING A SHARING AGREEMENT, CONTRACTING, AND CONTRACT NEGOTIATIONS

a. A decision to develop a sharing agreement should only be made based on determinations that:

(1) No eligible veteran will be denied or delayed in receiving care or services because of use of VA resources for non-veteran patients under the proposed arrangements (See M-1, Pt. I, Pars. 4.25 and 17.43).

(2) Because of cost, the medical equipment, services, space, or personnel to be shared are of limited availability, or unusual nature, either unique in the medical community, or subject to maximum utilization only through mutual use.

(3) In the case of VA obtaining the use of a resource, the following is mandated:

(a) A need for the resource which is clearly demonstrated;

(b) A sufficient verifiable projected demand for the services at the VA facility;

(c) The fact that the agreement would obviate a need to provide a similar resource in a VA facility; and

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(d) The use of the resource is within the scope of the VA facility's approved mission statement.

(4) In the case of VA providing the use of a resource, the resource is in a VA health care facility and has been justified on the basis of veterans' needs but has not been used to maximum effective capacity.

(5) The proposed contractor operates a health care facility, medical school, or research center.

(6) If the proposed contract is for the acquisition by VA for services of a health care professional, the following two conditions shall be met:

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(a) Recruitment

1. The VA facility is unable to recruit VA employee(s) to perform the services; or

2. Recruitment of employee(s) to meet those specific or limited needs would not be the most efficient use of resources (efforts to recruit employee(s) to provide needed services has been unsuccessful or active recruitment of employee(s) to meet needs is not reasonable, for reasons such as salary discrepancies for the services required including academic and research needs), or

3. Recruitment of employee(s) would not be the most efficient use of resources (for example, when VA's need for the service can be satisfied more economically by contract than by employment); and

(b) Rights. The rights and privileges of permanent employees are fully protected. Where the proposed contract would convert a VA medical service (e.g., Radiology Service) staffed by VA employees to a medical service staffed by employees of a contractor (e.g., an affiliated medical school), the VA medical facility must first obtain the Under Secretary for Health's determination that the contract is necessary in order to provide services to eligible veterans at the VA medical facility that could not otherwise be provided at the medical facility. This determination is required by 38 U.S.C. Section 8110(C)(3).

(7) Complete supporting records documenting that each of these conditions have been met, must be maintained at the VA health care facility, and summarized in the transmittal letter accompanying the proposed sharing agreement to VA Central Office that is submitted for review and approval (See par. 34.11(b)).

b. Role of the Contracting Officer

(1) The contracting officer is responsible for ensuring the performance of all necessary actions for the effective negotiation and execution of specialized medical resources sharing agreements. No specialized medical resources sharing agreement shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, FAR/VAAR regulations, and all other applicable procedures, including clearances and approvals, have been complied with.

(2) The contracting officer must head the negotiating team and is responsible for the initiation and completion of all negotiating procedures. To ensure improved negotiations, all specialized medical resources

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requirements should be discussed and planned at an organizational level within Acquisition and Materiel Management Service not lower than the Chief, Purchasing and Contract Section.

(3) The responsibilities of the contracting officer include:

(a) Issuing solicitations;

(b) Conducting or coordinating cost or price analyses;

(c) Conducting or controlling all negotiations concerning cost or price, technical requirements, and other terms and conditions; and

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(d) Selecting the source for sharing agreement award.

(4) These activities are conducted with input from:

(a) A Technical Evaluation Team,

(b) The Contracting Officer's Technical Representative, and

(c) Other VA staff members who may be called upon to assist the contracting officer in conducting the negotiation process.

c. Competitive and Non-competitive Sharing Agreements. Following a decision to enter into a sharing agreement, the using service must submit a request to the Acquisition and Materiel Management Service (90) to establish a proposed contract. The request shall include a detailed work statement and description of performance requirements for the contractor. The contracting officer may pursue the acquisition of specialized medical resources through full and open competition (competitive); or other than full and open competition (non-competitive):

(1) Competitive Sharing Agreements (Full and Open Competition)

(a) The negotiation process with full and open competition facilitates discussion and usually affords offerers the opportunity to revise their offers before award of contract. It is the responsibility of the contracting officer to conduct meaningful discussions with the offerer prior to requesting BAFOs (best and final offers).

(b) The contracting officer:

1. Controls all discussions;

2. Advises the offerer of deficiencies in its proposal;

3. Provides an opportunity to satisfy the Government's requirements;

4. Attempts to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;

5. Resolves any suspected mistakes by calling attention to them as specifically as possible without disclosing information concerning other offerers' proposals or the evaluation process; and

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6. Provides the offerer a reasonable opportunity to submit any cost or price, technical or other revisions to its proposal that may result from the discussion.

(c) Following evaluation of the BAFOs, the contracting officer selects the source whose BAFO is the most advantageous to the Government, considering price and other factors. The objective of this process is to negotiate the lowest prices possible in the best interest of the Government.

(2) Non-competitive Sharing Agreements (Other than Full and Open Competition). Specialized medical resource sharing agreements negotiated with other than full and open competition may also be submitted. The justification and approval requirements of FAR 6.303 and VAAR 806.303 and 806.304 are applicable.

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(a) Approvals of justifications for contracts negotiated with other than full and open competition must be obtained before the contracting officer awards any contract and should be submitted concurrently with the proposed sharing agreement for Medical Sharing Office (166) review.

(b) A number of medical schools have formed physician practice groups as separate legal entities from the affiliated medical school. Physician practice groups may only be proposed contractors under 38 U.S.C. Section 8153 if they are or operate a health care facility.

d. Certified Cost or Pricing Data/Analysis and Contract Audit

(1) Certified cost, or pricing data, is required for all non-competitively negotiated contracts expected to exceed $100,000, except in rare instances (see FAR 15.804-2 and 15.804-3). The certified cost, or pricing data, must be included with the proposed sharing agreement when it is submitted to the Medical Sharing Office (166) for review and approval.

(2) When cost, or pricing data, is required, the Contracting Officer shall conduct a cost analysis to evaluate the reasonableness of individual cost elements. The Contracting Officer shall make a price analysis to ensure that the overall price offered is fair and reasonable. When cost, or pricing data, is not required, the Contracting Officer shall make a price analysis to ensure that the overall price offered is fair and reasonable (See FAR 15.805-1(a)and(b)). Contracting Officers must require prospective contractors to perform a price analysis and/or a cost analysis if required by FAR 15.805-1. The Contracting Officer is responsible for verifying the stated anticipated dollar threshold against the actual usage of the prior contract. If the proposed contract is for services not previously provided, the Contracting Officer shall perform and document a market survey to substantiate the stated anticipated dollar threshold provided by the requesting service(s).

(3) If the proposed contract is for the services of health care professionals, the contract price must be negotiated based on the actual salary of those individuals providing the services.

(a) If the individual to provide the services is not known before the contract is awarded, the median salary shall be used.

(b) If subsequent actual salaries are lower than the estimates, the contract price should be modified accordingly.

(c) If the contract modification to account for the lower salaries does not otherwise modify the contract, the Contracting Officer may approve the modification if it results in a decrease in cost to VA. Only in this

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situation may the Contracting Officer approve the modification without approval from the Medical Sharing Office.

(4) All submissions to VA Central Office of non-competitive specialized medical resource contracts must contain cost comparison data:

(a) Comparison sources for sharing agreements involving specialized medical resources other than personnel should include data such as VA fee basis, local hospital rates, third-party billing rates (e.g., HMO (Health Maintenance Organization) rates, Blue Cross and Blue Shield rates, etc.), or published interagency rates.

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(b) Comparison sources for sharing agreements for health care professionals should include local hospitals, medical school affiliates, and published data from sources such as the American Association of Medical Colleges.

1. Data provided to the Medical Sharing Office shall include the median and the range of base salary frequency distribution.

2. Salary data from the affiliated medical school should include the salaries of assistant and associate professors in the clinical specialty.

(5) All proposed non-competitively negotiated sharing agreements in excess of $500,000 are subject to audit by the DHHS (Department of Health and Human Service) or the DCAA (Defense Contract Audit Agency), as appropriate, except where the information available to the Contracting Officer is considered adequate to determine the reasonableness of the proposed cost or price (see FAR 15.805-5).

(a) When contracting for the use of specialized medical resources, Contracting Officers may exercise this exception only with prior written approval from the Director, Acquisition Policy and Review Service (95), VA Central Office, in consultation with the Medical Sharing Office (166), and the General Counsel (023).

(b) Results of any audit conducted by DHHS or DCAA of proposed sharing agreements must accompany the proposed contract when it is submitted to the Medical Sharing Office (166), for review and approval. NOTE: The $500,000 threshold applies to the base contract plus any option years. Thus, a contract of $200,000 plus 2 option years at the same price would require an audit, as the total value exceeds $500,000.

(6) Certified cost, or pricing data, and contract audits are used by Contracting Officers to develop negotiation strategies and to determine best price. The Contracting Officer is required to document why a contract audit was not obtained and, if an audit was obtained, any actions taken based on audit recommendations.

e. Profit on Non-Competitive Specialized Medical Resources Contracts with Affiliates. In negotiating specialized medical resources contracts with affiliates, the primary principle should be for VA to reimburse the affiliate for all expenses associated with the contract.

(a) During the negotiation process, the Contracting Officer should aggressively discourage the allowance of profit as a factor in pricing the agreement. Affiliates may attempt to include profit either directly or indirectly, as a cost element in their offers for the use of specialized

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medical resources. For example, an affiliate may attempt to include profit as unspecified "overhead," inflated salary estimates or in other ways.

(b) Because these contracts are non-competitive, and the medical school receives other benefits through its affiliation with VA, Contracting Officers should carefully scrutinize all cost or pricing data elements and should discourage any profit on contracts with affiliates. If any profit is allowed, it must be shown as a discrete item in the certified cost or pricing data.

f. Price Negotiation Memorandum. Subsequent to the development of a negotiation strategy and actual negotiation, the Contracting Officer will prepare a PNM (Price Negotiation Memorandum) outlining the facts of the negotiation. A copy of the PNM

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must be included as an attachment to the solicitation package submitted to the Medical Sharing Office (166) for review.

g. Deviations from FAR or VAAR

(1) When the Contracting Officer considers it necessary to deviate from the FAR or VAAR, a request for authority to deviate from the regulations must be submitted to the Acquisition Policy and Review Service (95A), and must be approved prior to submission of the proposed sharing agreement to the Medical Sharing Office. The request must clearly state the circumstances warranting the deviation.

(2) Because deviation requests are often submitted to the Office of General Counsel (023), for review and recommendations, Contracting Officers should forward requests as soon as the necessity for a deviation from the regulations is identified.

(3) The Deputy Assistant Secretary for Acquisition and Materiel Management may authorize individual deviations from the FAR or VAAR (see VAAR 801.403).

(a) Requests for class deviations can only be approved by the Deputy Secretary, after review by the Deputy Assistant Secretary for Acquisition and Materiel Management and the Senior Procurement Executive (VAAR 801.404).

(b) FAR class deviations also require consultation with the chairperson of the Civilian Agency Acquisition Council (FAR 1.404). Deviations, particularly class deviations, should be kept to a minimum.

(4) When authorization is granted to deviate from FAR or VAAR provisions or clauses, Contracting Officers are reminded to follow the procedures detailed in FAR 52.107(e) and (f), as applicable. Approvals of individual or class deviations must accompany the proposed sharing agreement when it is submitted to the Medical Sharing Office (166) for review.

h. Conflict of Interest. A government employee who is employed by a contractor is prohibited from participating personally and substantially on behalf of the Government through decision, approval, disapproval, recommendation, rendering of advice, or certifying for payment or otherwise in that contract. No VA employee who is an employee, officer, director, or trustee of an affiliated university, or who has a financial interest in the contract, may lawfully participate in a VA contract or any other Government contract with the university.

(1) These conflict of interest principles, derived from criminal statutes and other laws, limit the sources VA may consult in the contracting process.

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For example, where a university or a part thereof is a contractor or potential contractor, to avoid violating the conflict of interest laws, no one who is employed by the university shall be on the negotiation team. The Contracting Officer will serve as the lead negotiator.

(a) A VA employee who is not employed by the affiliated university, who does not serve as an officer, director or trustee at the university, and who has no financial interest in the contract may permissibly participate in the contracting process.

(b) VA physicians with these relationships may not take any actions on behalf of VA on a sharing contract involving "their" university.

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(2) A physician or other employee who holds academic title, but receives no remuneration or benefits of financial value from the affiliate, and who is not subject to direction by the affiliate, may be eligible to participate in the contracting process, under the direction of the Contracting Officer. Such an individual must request and receive a written opinion from the District Counsel approving his or her participation in the contracting process. This written opinion must be made part of the contracting file.

(3) General VA workload projections developed independent of the contract for purposes of operating the VA facility are not "personal and substantial participation in the contract." Completion of the "Statement of Work" would be "personal and substantial participation in the contract."

(a) Examples of VA employees who may participate are:

1. Local VA employees who are not employees, directors, officers or trustees of or otherwise affiliated with the university.

2. A local VA physician holding academic title with an affiliated university who receives no remuneration or benefits of financial value from the university, who is not subject to direction by the university, and who has received a written opinion from the district counsel approving the physician's participation.

3. VA employees from other VA facilities who are not employees, directors, officers or trustees or otherwise affiliated with the university involved with the particular contract.

4. The Regional COS (Chief of Staff) (if this individual is not an employee, director, officer or trustee of, or otherwise affiliated with the university involved with the particular contract).

5. An outside consultant (defined in MP-5, Pt. II, Ch. 2) who is not an employee, director, officer or trustee of, or otherwise affiliated with the university involved with the particular contract.

(b) The Regional COS will maintain a roster of VA clinical specialists in the region who may serve as consultants to assist in the negotiation process. The roster shall set forth the affiliations of all consultants named in the roster.

(c) The Criminal Conflict of Interest Statute, 18 U.S.C. Section 208; the Procurement Integrity Law, 41 U.S.C. Section 423; and Employee Standards Conduct, 5 CFR, Part 2635, and other laws and regulations apply to dealings with contractors and potential contractors by VA employees.

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1. VA employees shall consult with District or Regional Counsel ethics counselors prior to acting for VA at any stage in obtaining specialized medical resources from, or on any other contracts involving, institutions with which they have employment, directorship, trusteeship, or other formal relationships.

2. Seeking legal advice ensures that employees act with an awareness of current law.

(d) All appointments of part-time physicians who on non-VA time provide services to VA on a contractual basis will be reviewed/approved by the Regional COS in consultation with District, Regional, or General Counsel.

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1. The Regional COS may disapprove the request without legal advise on its own authority.

2. Approval must be in consultation with District, Regional or General Counsel. The Regional COS must have verifiable documentation without obtaining legal advice to certify that there were no other options available. NOTE: Such appointments should be discouraged because of the strong potential for a conflict of interest.

(e) Disciplinary action for violating the Employee Standard of Ethical Conduct regulation will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. (See Section 2635.107(b) of the Standards of Ethical Conduct for Employees of the Executive Branch). Where a requester of advice from a VA ethics officer engages in conduct in good faith reliance upon an ethics advisory opinion, the requester generally cannot be found to have knowingly violated restrictions in the Procurement Integrity Law Restriction in issue. (See 48 CFR Section 3.104-8(e)(5).)

i. Research Services

(1) If medical research is to be included as a component of a specialized medical resources sharing agreement, the solicitation must specify in Section C (Statement of Work):

(a) The type of research proposed,

(b) The amount of research time,

(c) The research requirements,

(d) The status of the researcher on the project (i.e., principal investigator, collaborator, etc.), and

(e) A statement that the project is approved and funded VA research.

(2) Any research contracted for by VA under 38 U.S.C. Section 8153 must be conducted in accordance with the procedures set forth in VHA Manual M-3.

NOTE: This information must be included in the solicitation package submitted to the Medical Sharing Office for review and approval.

j. Education and Other Services. Sharing agreements contracted for by VA under the sharing authority (i.e., 38 U.S.C. 8153) may include services such as training and direction of residents, and quality assurance activities,

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provided that the contract specifies in the Statement of Work that these duties are to be performed and includes an estimate of the amount of time that will be spent conducting them. Any educational activities contracted for under 38 U.S.C. 8153 must be conducted in accordance with VHA Manual M-8. This information must be included in the solicitation package submitted to VA Central Office for review. These activities must be spelled out in the contract and are subject to the same monitoring requirements as specified in subparagraph 34.11(d).

k. Contractor Personnel Serving as Expert Witnesses

(1) VA employees cannot serve as expert witnesses against the Government.

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(2) Contractor personnel who provide services to VA under a specialized medical resources contract must not be permitted to serve as expert witnesses in any suit against the Government.

(3) Clauses to accomplish this must be included in all contracts. (See A&MM formats for the approved clauses.)

34.11 MEDICAL SHARING OFFICE REVIEW

a. An original and four copies of the proposed sharing agreement shall be submitted through the appropriate Regional Director (13__/13), VA Central Office, to the Medical Sharing Office (166), VA Central Office, 75 days prior to contract award. The Regional Director shall complete a review and forward solicitations within 5 days of receipt. NOTE: If the resources of more than two services or service areas (e.g., radiology, nuclear medicine, pathology, etc.) are being shared, an additional copy of the proposed contract must be submitted for each additional service to be utilized.

b. In accordance with VAAR 815.7001(e), an original and four copies of a transmittal letter, signed by the VA health care facility Director, must be included with the proposed sharing agreement. The letter must contain the following:

(1) A statement explaining how in relation to cost, limited availability or unusual nature, the medical resources to be shared are either unique in the medical community or are subject to maximum utilization only through sharing.

(2) A clear description of the resources to be procured or provided.

(3) Justification of the need for the services, i.e., a statement explaining how the proposed agreement would obviate the need for a similar resource to be provided in the VA facility (VA acquisition).

(4) A statement of the methodology used to determine the cost of the resources and certification that the quantity of the resources and prices to be paid are reasonable (VA acquisition).

(5) The steps taken to calculate the cost for services to be sold by VA (VA provide only).

(6) Full name and address of the contractor.

(7) A statement declaring that the contractor operates a health care facility, research center, or medical school.

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(8) Certification that effective controls are in place to monitor contractor performance.

(9) Written certification from both the facility Director and facility COS that the Contracting Officer conducted or controlled all contract negotiations and that there were no discussions between VA officials and the contractor's personnel about the contract at which the Contracting Officer was not present.

(10) A statement from the VA health care facility Director specifying that no person who participated in negotiating the contract on VA's behalf had any relationship with the contractor.

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(11) A statement from the VA health care facility Director specifying all relationships persons who participated in negotiating the contract on VA's behalf had with the contractor.

(12) Written certification from the Contracting Officer required by FAR 3.104-9(c)(1)(i) for contracts or contract modifications exceeding $100,000 that, to the best of the Contracting Officer's knowledge and belief, such officer has no information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Act, as implemented by the FAR, occurring during the procurement.

(13) Written certification by the Contracting Officer required by FAR 3.104-9(c)(1)(ii) for contracts or contract modifications exceeding $100,000, containing any and all information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the of the Office of Federal Procurement Act, as implemented by the FAR, occurring during the procurement.

(14) In proposed contracts to procure the services of health care professional(s), certification that these personnel cannot be hired using conventional employment practices, or would not be the most effective use of resources (see par. 34.10(a)(6)).

(15) A description of the VA health care facility efforts to recruit the staff members.

c. Copies to be Submitted. If applicable, an original and four copies of the following must also be submitted with the proposed sharing agreement:

(1) Documentation of approval of justification for proposed sharing agreements negotiated with other than full and open competition.

(2) Certified cost or pricing data (for proposed sharing agreements in excess of $100,000), as required.

(3) Cost and/or price analysis.

(4) Price Negotiation Memorandum.

(5) DCAA or DHHS audit results (for proposed sharing agreements in excess of $500,000).

(6) Documentation of approval of requests for individual or class deviations for the sharing agreement submitted.

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d. Monitoring procedures

(1) Section H of proposed sharing agreements in which VA procures resources must contain a detailed description of the monitoring procedures used by the VA health care facility to ensure contract compliance.

(a) These procedures must be:

1. Complete enough for the VA Central Office reviewer to determine that an adequate contract monitoring process will be established; and

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2. Able to demonstrate that the resources called for under the sharing agreement have been received by the VA facility.

(b) This description shall also identify the VA official(s) by title, responsible for verifying contract compliance.

(c) After contract award, any incidents of contractor noncompliance as evidenced by the monitoring procedures shall be forwarded immediately to the Contracting Officer.

(2) Contract performance monitoring is the responsibility of the VA health care facility.

(a) The proposed contract should also include a description, in writing, of the facility's record-keeping procedure as it relates to the contract.

(b) Documentation of services performed should be reviewed in order to certify payment.

(c) The VA health care facility should perform periodic spot checks and document with the using service to ensure that records are monitored and tracking procedures are followed.

(d) The using service must furnish statement in writing to the Contracting Officer at close out of the contract that includes a summary of contractor actions and a statement that all requirements of the contract were fulfilled as agreed.

(3) A summary evaluation of contractor performance, based upon the compliance or noncompliance of contract requirements as evidenced under the monitoring procedure, shall be forwarded by the monitoring official to the Contracting Officer prior to exercising any option year.

(4) Conflict of interest provisions apply to contract monitoring (see par. 34.10(h)). A government employee who is also employed by a contractor may not certify bills for payment. This should be done by a knowledgeable individual who is not an employee, officer, director, or trustee of the contractor and who does not have a financial interest in the contract.

e. A completed Checklist/Specialized Medical Resources Sharing Agreement (App. 34B), to be completed by the Contracting Officer, must accompany the proposed sharing agreement. A sharing agreement submission package missing any of the applicable elements (subpars. 34.11a. to 34.11d.) will be returned to the requesting VA facility without review.

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f. The Medical Sharing Office will coordinate review of contracts submitted by field facilities with the appropriate VA Central Office program offices. The Medical Sharing Office will request a technical review from Acquisition Policy and Review Service (95B), VA Central Office, for competitive contracts valued at or above $200,000 and for all non-competitive contracts valued at or above $50,000.

g. The Medical Sharing Office will request the Office of General Counsel to review all proposed sharing agreements.

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(1) The appropriate VA Central Office clinical program office(s) will review contracts for content, clinical relevance, and pricing and will return comments and concurrences to the Medical Sharing Office.

(2) The Office of General Counsel, the Acquisition Policy and Review Service or the VA Central Office clinical program office(s) reviewing a sharing agreement may ask the Medical Sharing Office to obtain additional information regarding the proposed agreement from the submitting VA facility.

(3) The Office of General Counsel or a VA Central Office clinical program office may request that a proposed agreement be placed on the agenda of the next scheduled meeting of the Medical Sharing Committee for discussion and review by the full committee.

(4) The Medical Sharing Office may also bring before the Sharing Committee any proposed sharing agreement for which there is significant conflict in review comments returned by different program offices.

h. Once concurrences are received from all VA Central Office program offices, the Medical Sharing Office will prepare the response regarding the disposition of the proposed sharing agreement.

i. Only after VA Central Office approval is obtained can the proposed contract be executed by the Contracting Officer.

j. A copy of all executed contracts and the Contracting Officer certificate if required by the Procurement Integrity Regulation (48 U.S.C. CFR Section 3.104-9(c)(2)) shall be submitted to the Director, Medical Sharing Office (166), VA Central Office, within 5 days of the award of the contract. The submission shall also contain a certification statement signed by the facility Director that all revisions required in the technical/legal review have been incorporated in the contract.

k. VA health care facilities must have a record-keeping system that documents the performance of each sharing agreement. The system must include data for the gross billings for all services even if a net payment system is used.

34.12 SHARING AGREEMENTS WITH OPTION YEARS

a. The Contracting Officer has the authority to award two prepriced 1-year option years in addition to the base year (not to exceed a maximum of 3 years) in accordance with VAAR 815.7001.

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b. Upon exercising an option year, a copy of the SF (Standard Form) 30, Supplemental Agreement, along with a copy of the executed contract will be forwarded within 15 days of the action to the Medical Sharing Office (166) through the Regional Director (13__/13), VA Central Office. The material submitted must clearly indicate which option year is being executed.

34.13 SHARING AGREEMENT MODIFICATIONS

a. The resources, requirements, terms or prices of an approved sharing agreement may be changed by a written modification to the contract (See FAR Part 43).

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b. The Contracting Officer shall submit an original and four copies of the completed Supplemental Agreement form (SF-30) and the revised Section B detailing the proposed modification(s) to the contract to the Medical Sharing Office (166).

c. Only in situations described in subparagraph 34.10(d)(2) (where the actual salaries of contractor personnel are lower than the estimates used in negotiating the contract), the services provided have not changed, and the contract price is lowered, may the Contracting Officer approve a modification without VA Central Office approval. All other modifications will be prepared by the Contracting Officer and, prior to becoming effective, shall be approved by the Medical Sharing Office.

34.14 COSTING

a. Negotiating a VA acquisition sharing agreement under 38 U.S.C. Section 8153 shall result in a reimbursement rate lower than VA would otherwise pay under fee-basis care or contract hospitalization authority. VA shall not pay more than the Medicare rate because VA guarantees payment, and the time period for reimbursement from VA is considerably faster than that of third party payers. There is little or no administrative overhead associated with VA payment when compared to third party carriers.

b. In implementation of Title 38 U.S.C. Section 8153(b), a VA health care facility Contracting Officer shall negotiate a rate of reimbursement that is favorable to VA.

(1) This rate should be based on need and local market conditions and the actual cost to the facility providing the service.

(2) Factors to be considered for cost negotiations include, but are not limited to:

(a) Published Interagency rates,

(b) VA fee-basis rates from nearby VA facilities,

(c) Existing rates from other federal facilities, including DOD (Department of Defense), and

(d) Local rates from third party carriers such as Blue Cross and Blue Shield, and

(e) Cost, or pricing, data from the contractor,

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c. When a proposed sharing agreement involves the contractor's use of federally owned property, such as medical space or medical equipment, VA should obtain a fair market value in accordance with comparable commercial practices. The negotiated cost for the use of space or equipment need not be limited to the recovery of costs, and may produce net revenue to the Government (OMB Circular A-25, Sept. 23, 1959).

d. All sharing agreements shall provide for reciprocal reimbursement and shall result in a bill (or bills) and the transference of funds.

(1) Funds for services provided to VA or purchased by VA should result in funds being transferred from one health care facility to the other.

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(2) Exchange of use sharing agreements, where both health care facilities agree to provide resources to each other, must result in reciprocal billing.

(3) Services sold do not have to equal the services bought in either cost or quantity, and attempts to balance them should be avoided.

34.15 FUNDING

a. Reimbursement collections resulting from sharing agreements shall be funded back to the appropriate VA medical center appropriation(s) which provided the service(s).

b. Reimbursements must be collected from non-Federal sources during the fiscal year the services were provided in order to receive credit for them.

34.16 REPORT ON SHARING PROGRAMS

a. Title 38 U.S.C. Section 8153(e) requires the Secretary of Veterans Affairs to submit to Congress an annual report on the sharing of specialized medical resources. The Medical Sharing Office is responsible at the end of each fiscal year for collecting and analyzing the data submitted by all VA health care facilities for this Congressional Report.

b. At the end of each fiscal year, each VA health care facility must report all fiscal year activities conducted under 38 U.S.C. 8153 in the format contained in VA Form 10-1245 (October 1990)], Sharing Medical Resources Report. A sample of this form is shown as Appendix 34C.

c. For each contract under Section 8153, a separate VA Form 10-1245 which indicates:

(1) The name of VA health care facility,

(2) The 3-digit VA facility number, the authority under which the contract has been executed (i.e., 38 U.S.C. 8153),

(3) The name and address of the sharing contractor,

(4) The number of units purchased or sold, and

(5) Total cost. (Column four on the form, "average cost," is not required.)

d. All transactions must be assigned to one of the service categories listed in Appendix 34D.

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e. Each Form 10-1245 submitted must be signed by the VA health care facility director.

f. VA health care facilities with no sharing of specialized medical resources contracts in a fiscal year are required to submit a negative report.

g. Reports from all VA health care facilities must be received by the Medical Sharing Office (166), VA Central Office, on or before October 15, of each year.

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SECTION III. GUIDANCE ON REQUESTS FOR INTERIM CONTRACT AUTHORITY UNDER 38 U.S.C. § 8153 AND 38 U.S.C. § 7409

34.17 PURPOSE

This section establishes procedures for requesting interim contract authority to procure or to provide the use of specialized medical resources or to procure scarce medical specialist services.

34.18 POLICY

Interim contract authority was established to enable VA (Department of Veterans Affairs) medical centers to procure or to provide needed specialized medical resources and to procure scarce medical specialist services in emergency situations. An example of such an emergency is a VA medical center needing a radiologist due to a sudden resignation or illness of a staff radiologist. Neither inadequate planning nor late submissions of proposed contracts by a VA medical center constitutes a valid emergency. Interim contract authorities are limited in duration to 90 days or less.

34.19 MEDICAL SHARING OFFICE RESPONSIBILITIES

a. All proposed scarce medical specialist services and specialized medical resources contracts must be approved by VHA (Veterans Health Administration) Medical Sharing Office before award [see 48 CFR (Code of Federal regulations) § 801.602-70 (a)(4)(vi) and (vii) and 815.7001 (c)]. In an approved class deviation from these regulations, the Medical Sharing Office (166), may approve "interim contracts" prior to obtaining the full-legal and full-technical reviews required by the regulations. Following the execution of all interim contracts, a copy of the interim contract must be sent to the Medical Sharing Office (166), for legal, technical and program review in compliance with the cited regulations.

b. The Medical Sharing Office (166), requires 75 days for the legal and technical review of proposed contracts for Specialized Medical Resources under 38 U.S.C. (United States Code) § 8153 and Scarce Medical Specialist Services under 38 U.S.C. § 7409. Medical centers with contracts scheduled to expire must submit new proposals in enough time to preclude the necessity to request interim contract authority.

34.20 NEW CONTRACTS

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a. All new contracts under the 48 CFR should contain FAR (Federal Acquisition Regulations) 52.217-8, "Option to Extend Services." Under this provision, medical centers may extend the existing contract not to exceed 6 months while they complete negotiations and seek VA Central Office approval of a new contract. Medical centers should exercise this option to the maximum term before submitting a request for interim contract authority.

b. If a contract was executed without including FAR 52.217-8, the new proposed contract must be submitted to the Medical Sharing Office (166), 75 days before the existing contract expires. VA Central Office will review interim contract authority requests using the same staffing, workload and salary guidelines as for long-term final

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contracts under these authorities. New prices may not be implemented under an interim contract authority if the services have recently been provided under a contract. Should negotiations fail and current pricing is not available during the interim period, exceptions to this policy are subject to approval of the VA Central Office Medical Sharing Committee and may be granted on a case-by-case basis with proper justification.

c. Should an existing contract expire prior to submission of the proposed new contract, the VA medical center Director may request interim authority from the Medical Sharing Office (166). The appropriate Director of Field Support (13_) will be notified of the pending request.

34.21 INTERIM CONTRACTS

a. The terms and renewals of interim contract authorities are strictly limited. Interim contract authorities are approved for 30 to 90 days. Additional interim contract authority may be granted on an exception basis. Cumulative interim contract authorities that extend beyond 180 days must be approved by the AsCMD (Associate Chief Medical Director) for Operations based on adequate justification from the facility. In addition, when negotiating with affiliated institutions, and an agreement cannot be reached within the initial 180 day interim period, then the contract shall be competitively bid unless there is compelling justification from the facility and subject to the approval of the VA Central Office Medical Sharing Committee.

b. When executing an interim contract authority, the contractor must be informed in writing that this is an interim measure for providing services. If the resources have not recently been provided under a contract, the contractor should also be told in writing that costs paid do not constitute acceptance of that price for any contract/interim contract authority currently being negotiated. Each facility is responsible for developing a price negotiation memorandum which complies with FAR Part 15.8 and VAAR (VA Acquisition Regulations) Part 815.808.

c. Interim Contract Authorities under 38 U.S.C. § 7409 are subject to Full and Open Competition. The only exception to this rule is when proposed contracts are negotiated and awarded to the institutions affiliated with VA (See VAAR 806.302-5). Receipt of interim contract authority only permits the contracting officer to contract for a limited time period without the normal central office review and approval. All FAR and VAAR requirements apply to the proposed interim contract, including contract performance monitoring, certified cost or pricing data, and conflict of interest provisions.

34.22 REQUESTS FOR INTERIM CONTRACTS

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a. Requests for Interim Contract Authority shall be made on a memorandum signed by the VA medical center Director. The following information will be provided:

(1) Authority (38 U.S.C. § 8153 or § 7409);

(2) Facility Name;

(3) Date of request;

(4) Type of services;

(5) Quantity of services (i.e., 1 FTEE (Full-time Employee Equivalent), 3 procedures, 17 days, etc.);

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(6) Description of services (requirements);

(7) Length of authority requested (number of days/months);

(8) Contractor name and whether this is a competitive or sole source procurement;

(9) Extension of existing contract/interim contract authority or new requirement. If this is an extension of an existing contract, indicate the Medical Sharing Office contract control number, i.e., SM# 93/???;

(10) Unit cost/procedure or time and total estimated cost. If more than one service is requested, provide estimated costs for each;

(11) VA medical center contact person (name/FTS number/FAX number);

(12) Number of times interim contract authority has been requested for these services during the current and immediate past fiscal year. (Indicate the date(s) of your last request and approval).

b. All requests for Interim Contract Authority will be submitted to the Medical Sharing Office (166) via facsimile at (202) 535-7566. Facilities will be notified of the approval/disapproval of a request via facsimile. This will provide approval/disapproval signatures for the official contract file.

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Contracts for SMSS (Scarce Medical Specialist Services)

CHECKLIST FOR PROPOSED SMSS CONTRACTS

(DATE) 1993 Edition

FOR USE BY VA CONTRACTING OFFICERS, REGIONAL CHIEFS OF STAFF AND VA CENTRAL OFFICE REVIEWERS

Type of VA Central Office Review Required

(Competitive Contracts)

/__/ Legal, technical and clinical review of a proposed competitive contract by appropriate VA Central Office staff offices prior to advertising and competition.

/__/ Review of prices by appropriate VA Central Office clinical rogram offices of a proposed competitive contract (the contract has previously received legal, technical and clinical review at VA Central Office).

(Non-Competitive Contracts)

/__/ Legal, technical and clinical review of a proposed non-competitive contract by appropriate VA Central Office staff offices.

Mandatory Contract Requirements

1. In the letter of transmittal and justification to the Medical Sharing Office (166), did the VA medical center Director:

Yes No

/__/ /__/ a. Provide certification from both the Director and Chief of Staff that the contracting officer conducted or controlled all contract negotiations and that there were no discussions between VA officials and the contractor's personnel about the contract at which the contracting officer was not present.

/__/ /__/ b. Provide a statement specifying that no person who participated in negotiating the contract on VA's behalf had any relationship with the contractor, or

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/__/ /__/ c. Provide a statement specifying all the relationships with the contractor which persons who participated in negotiating the contract on VA's behalf had; and

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CHECKLIST FOR REVIEWERS--continued

Yes No

/ / / / d. The written certification from the contracting officer required by FAR (Federal Acquisition Regulations) 3.104-9(c)(1)(i) for contracts or contract modifications exceeding $100,000 that, to the best of his or her knowledge and belief, such officer has no information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement, or

/ / / / e. The written certification by the contracting officer required by FAR 3.104-9(c)(1)(ii) for contracts or contract modifications exceeding $100,000 containing any and all information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement.

/ / / / f. Certify that contract physicians and/or other specialist to perform scarce medical specialist services cannot be hired using conventional employment practices or would not be the most efficient use of resources.

/ / / / g. Describe the VA medical center effort to recruit the staff members described in the proposed contract.

/ / / / h. Clearly describe the services required, including a description of current caseload, current staffing (employee or contract) and other pertinent information.

/ / / / i. Certify that the quantity of services to be purchased and prices to be paid are reasonable.

/ / / / j. Certify that effective controls are in place to monitor contractor's performance.

/ / / / k. Certify for Anesthesiology and Radiology contracts that the FTEE (Full-time Employee Equivalent) required falls within established guidelines (when issued by VA Central Office), or justify an exception.

2. Does the proposed contract:

Yes No

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/ / / / a. Incorporate the latest standardized formats.

/ / / / b. Have in Section C a clear acceptable statement of work, including:

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CHECKLIST FOR CONTRACT REVIEWERS--continued

Yes No

/_/ /_/ (1) The requirement that all work be performed at the VA medical center.

/_/ /_/ (2) A description of any educational activities.

/_/ /_/ (3) A description of any research activities.

/_/ /_/ c. Have in Section H a clear, acceptable contract monitoring procedure, which can document the contractor's attendance and performance of all required activities (clinical, education and research) including the VA official responsible for verifying contract compliance.

/_/ /_/ d. Include FAR Clause 52.237-7, Indemnification and Medical Liability Insurance. This FAR clause and VA policy require that contractors obtain their own malpractice insurance at the rate of $1 million per occurrence for physicians and dentists on scarce medical specialist services contracts. For all other scarce medical specialists, such as nurses, physical therapists, etc., the amount of coverage should be consistent with local practice.

/_/ /_/ e. Include documentation of approval of individual or class deviation(s), if applicable.

3. For proposed contracts using other than full and open competition, did the VA medical center:

/_/ /_/ a. Ensure that the proposed contract is with an affiliated institution and not a practice group or similar entity distinct from the affiliate.

/_/ /_/ b. Include a copy of the certified cost or pricing data, and the cost and/or price analysis, for proposed contracts over $100,000. When the individuals who are to provide services are known, cost or pricing data must be based on the salaries and benefits of those individuals. When individuals to provide services are not known, cost comparison data must be provided.

/_/ /_/ c. Include a copy of the DCAA or HHS audit for all proposed contracts above $500,000.

/_/ /_/ d. Include a copy of the price negotiation memorandum for the proposed contract.

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VA Form 10-1245d-1
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REPRODUCE LOCALLY

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APPENDIX 34B

July 14, 1993

CHECKLIST
Specialized Medical Resources Sharing Agreement
FOR COMPLETION BY THE VA CONTRACTING OFFICER

I. Type of Review Requested

a. (Competitive Contracts)

_____ Legal, technical and clinical review of a proposed competitive sharing agreement by appropriate VA Central Office staff offices prior to advertising and competition.

_____ Review of prices by appropriate VA Central Office clinical program office(s) of a proposed competitive contract (the sharing agreement has previously received legal, technical and clinical review at VA Central Office).

b. (Non-Competitive Sharing Agreements)

_____ Legal, technical and clinical review of a proposed non-competitive sharing agreement by appropriate VA Central Office program offices.

c. (Modification to Approved Sharing Agreement)

_____ Legal or clinical review to proposed modification(s) to an approved sharing agreement.

II. Mandatory Sharing Agreement Requirements

a. In the letter of transmittal to the Medical Sharing Office (166), did the VA facility Director include:

YES ___ NO ____ (1) A statement explaining how in relation to cost, limited availability or unusual nature, the medical resource is either unique in the medical community or is subject to maximum utilization only through sharing, and that other alternative sources existing within a geographic area were considered?

YES _____NO ____ (2) A clear description of the resources use of which is to be procured or provided?

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YES _____NO ____ (3) Justification of the need for the services; a statement explaining how the proposed agreement would obviate the need for a similar resource to be provided in the VA facility (VA purchase only)?

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YES ____ NO ____ (4) Statement of methodology used to determine the cost of those resources and certification that the quantity of the resources and prices to be paid are reasonable?

YES ____ NO ____ (5) Total cost of the resources the use of which will be bought by VA (mutual use/purchase or exchange of use agreements)?

YES ____ NO ____ (6) The calculated cost for resources the use of which is to be sold by VA (mutual use/provide or exchange of use agreements)?

YES ____ NO ____ (7) Full name and address of the contractor?

YES ____ NO ____ (8) A statement declaring that the contractor operates a health care facility, medical school, or research center?

YES ____ NO ____ (9) Certification that effective controls are in place to monitor contractor performance.

YES ____ NO ____ (10) Certification that effective controls are in place to monitor contractor performance?

YES ____ NO ____ (11) Written certification from both the Director and Chief of Staff that the contracting officer conducted or controlled all contract negotiations and that there were no discussions between VA officials and the contractor's personnel about the contract at which the contracting officer was not present?

YES ____ NO ____ (12) A statement specifying that no person who participated in negotiating the contract on VA's behalf had any relationship with the contractor, or

YES ____ NO ____ (13) A statement specifying all the relationships with the contractor which persons who participated in negotiating the contract on VA's behalf had, and

YES ____ NO ____ (14) The written certification from the contracting officer required by FAR 3.104-9(c)(1)(i) for contracts or contract modifications exceeding $100,000 that, to the best of his or her knowledge and belief, such officer has no information concerning a violation or possible violation of subsections

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27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement, or

YES ____ NO ____ (15) The written certification by the contracting officer required by FAR 3.104-9(c)(1)(ii) for contracts or contract modifications exceeding $100,000 containing any and all information concerning a violation or possible violation of subsections 27(a), (b), (d), and (f) of the Office of Federal Procurement Policy Act, as implemented by the FAR, occurring during the procurement?

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YES ____ NO _____ (16) In proposed contracts to procure the services of health care professional(s), certification that these personnel cannot be hired using conventional employment practices or would not be the most effective use of resources, and

YES ____ NO _____ (17) A description of the VA health care facility efforts to recruit the staff members?

b. Does the submission package include:

YES ____ NO _____ An original and four copies of the proposed sharing agreement (if more than one service is being shared, an additional copy of the agreement for each service utilized)?

c. Does the submission package include: (If not applicable, indicate N/A)

YES ____ NO _____ (1) Approval of justification for use of other than full and open competition? (FAR 6.303-1 and 6.303-2; VAAR 806.304)

YES ____ NO _____ (2) Certified cost or pricing data (for non-competitively negotiated contracts expected to exceed $100,000)? (FAR 15.804-2 and 15.804-3)

YES ____ NO _____ (3) Cost or price analysis (provided by the Contracting Officer)?

YES ____ NO _____ (4) Price Negotiation Memorandum? (FAR 15.808; VAAR 815.808)

YES ____ NO _____ (5) A copy of DCAA or DHHS audits for proposed non-competitively negotiated contracts in excess of $500,000? (FAR 15.805-5; VAAR 815.505-5)

YES ____ NO _____ (6) Documentation of approval of individual or class deviation(s)? (VAAR 801.403 and 801.404)

d. Does the proposed sharing agreement:

YES ____ NO _____ (1) Incorporate the latest standardized formats developed by VA Central Office (95B)?

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YES ____ NO _____ (2) Include a completed Section B (indicating all resources to be shared and prices/costs)?

YES ____ NO _____ (3) Include a completed Section C (a clear and specific statement of work)?

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YES ____ NO _____ (4) Include a completed Section H, containing a detailed description of the monitoring procedures used by the VA facility to ensure contract compliance?

YES ____ NO _____ (5) Include FAR Clause 52.237-7 (Indemnification and Medical Liability Insurance, Sept. 1989)?

YES ____ NO _____ (6) Include FAR Clause 52.217-8 (Option to Extend Services, Sept. 1989)?

YES ____ NO _____ (7) Include FAR Clause 52.203-8 (Requirement for Certificate of Procurement Integrity) in all solicitations expected to exceed $100,000? The certification must be completed by the offerer.

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Appendix 34C, VA Form 10-1245, is not available on WANG

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SERVICE CATEGORIES

Sharing of Specialized Medical Resources Contracts

SERVICE CODE	TYPE OF SERVICE/RESOURCE PURCHASED OR SOLD
1.0	Negative Report/No Sharing Activities
	ACADEMIC AFFAIRS
14.1	Medical Library Services
14.2	Medline Services
	MEDICAL RESEARCH
15.1	Research
15.2	Research - Animal Support
	DENTISTRY
16.1	Dentistry - General
16.2	Dentistry - Endodontics
16.3	Dentistry - Oral Surgery
16.4	Dentistry - Orthodontics
16.5	Dentistry - Periodontics
	EXTENDED CARE
17.1	Extended Care
	MISCELLANEOUS
90.1	Sterile Processing/Surgical/Trays, etc.
90.2	Ambulance (Including Air Ambulance)
90.3	Biomedical Engineering
90.4	Specialized Medical Space
	MEDICAL SERVICE
111.1	Allergy and Immunology
111.2	Cardiology - Including Angioplasty (PTCA), Intensive Care-Cardiac and Cardiac Catheterization
111.3	Dermatology
111.4	Endocrinology/Metabolism

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111.5	Gastroenterology
111.6	Pulmonary Medicine (Including Respiratory Medicine)
111.7	Renal Medicine (Kidney)
111.8	General Medicine (Including Intensive Care Medicine)
111.9	Infectious Diseases/AIDS
111.11	Rheumatology
111.12	Hematology/Oncology

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SURGERY

112.1	Anesthesiology
112.2	Cardiopulmonary Perfusion
112.3	Cardiothoracic Surgery
112.4	Gynecology
112.5	Lithotripsy
112.6	Neurosurgery
112.7	Ophthalmology
112.8	Orthopedics
112.9	Otolaryngology
112.11	General Surgery
112.12	Urology
112.13	Renal Transplant
112.14	Liver Transplant
112.15	Heart Transplant
112.16	Bone Marrow Transplant
112.17	Special Surgery (Including Mohs' Technique)
112.18	Plastic Surgery

PATHOLOGY

13.1	Pathology - Clinical Laboratory (Including Chemistry, Hematology, Immunology and Serology, Microbiology, Urinalysis, General Pathology)
113.2	Pathology - Anatomic C Laboratory (Including Cytology, Cytogenetics, Surgical, Electron Microscopy)
113.3	Blood Bank
113.4	Toxicology/Drug Monitor
113.5	Immunocytochemistry

RADIOLOGY

114.1	Radiation Therapy
114.2	Diagnostic Radiology (Including CT Scans, Neurovascular Radiology, General Radiology, Special Procedures, and Medical Physics)
114.3	Mammography
114.4	Magnetic Resonance Imaging
114.5	Ultrasound

NUCLEAR MEDICINE

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115.1	Nuclear Medicine (Including Scans, Non-imaging Studies, Radiation Safety and Radiopharmaceuticals)
115.2	Radionuclide Therapy
115.3	Radioimmunoassays
115.4	PET Scans

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MENTAL HEALTH & BEHAVIORAL SCIENCES

116.1	Psychiatry
116.2	Psychology

REHABILITATION MEDICINE

117.1	Occupational Therapy
117.2	Physical Therapy
117.3	Physiatry
117.4	Rehabilitation Medicine

NURSING

118.1	Nursing

PHARMACY

119.1	Pharmacy

DIETETICS

120.1	Dietetics

PROSTHETICS & SENSORY AIDS

121.1	Prosthetics

SOCIAL WORK

122.1	Social Work

OPTOMETRY

123.1	Optometry

BLIND REHABILITATION

124.1	Blind Rehabilitation

AUDIOLOGY & SPEECH PATHOLOGY

125.1	Audiology
125.2	Speech Pathology

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NEUROLOGY

126.1 Neurology

SPINAL CORD INJURY

127.1 Spinal Cord Injury

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PODIATRY

ENVIRONMENTAL MANAGEMENT

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COST ANALYSIS
SPECIALIZED MEDICAL RESOURCES SHARING AGREEMENT

VA MEDICAL CENTER _____ CONTRACT WITH _____

(1) VA Purchase _____ (2) VA Provide _____ (3) Exchange of Use ____

Cost Element	Data Sheet Reference	Unit Cost
I. Direct Costs		
A. Staffing	Item 1b	$ _____
B. Supplies	Item 1c	$ _____
II. Indirect Costs		
A. Equipment		
1. Depreciation	Item 2a	$ _____
2. Service Contract(s)	Item 2b	$ _____
3. Maintenance and Repair	Item 2c	$ _____
4. Subtotal		$ _____
B. Engineering/Building Management	Item 2d	$ _____
TOTAL DIRECT AND INDIRECT COSTS: (Total I + II, above)		$ _____
III. VA Central Office Administrative Costs	Item 4	$ _____
TOTAL UNIT COST PER PROCEDURE	Item 5	$ _____
GRAND TOTAL: (Total Unit Cost x Number of Procedures)	Item 6	$ _____

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COST ANALYSIS WORK SHEET
Specialized Medical Resources Sharing Agreement

This work sheet is provided to assist you in the completion of the cost analysis sheet which must be submitted with the proposed sharing agreement. All computations are for unit costs. Complete all items on this form prior to completing the cost analysis sheet (app. 34E).

1. Direct Costs

a. Workload Projection (number of units/procedures):

(1) VA Medical Center: _____

(2) Sharing Institution _____

b. Detailed Staffing Expenses: (FTEE requirements for 1 full year)

Position	Salary	Fringe Benefits	Special Pay	Total
(1)				$ _____
(2)				$ _____
(3)				$ _____

Total Estimated Staffing Expense (1 year) $ _____

Unit Cost/Staffing

Total staffing expense / Total number of units = $ _____

c. Supplies

Total Supplies $ _____

Unit Cost: Total supply expense / Total number of units = $ _____

2. Indirect Costs

a. Equipment Depreciation (Straight Line Method; for equipment costing $5,000 or more at purchase)

Acquisition Cost / Life Expectancy = Annual Depreciation is $ _____

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Equipment Depreciation per Unit: $\frac{\text{Annual Depreciation}}{\text{Total Number of Units}} = \$ \_\_\_\_\_$

(Use AHA (American Hospital Association) or CMR (Consolidated Memorandum Receipt) Schedules.)

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b. Service Contract (Equipment)

Cost Per Unit:

Cost of Service Contract = $ _____
Total Number of Units

c. Maintenance and Repair (Equipment)

Cost Per Unit:

Total Cost Equipment Maintenance and/or Repair = $ _____
Total # of Units

d. Building Management/Engineering (including cleaning of space, utilities, etc.), (per square foot). Include only costs directly related to the functional area:

Square Feet of Functional Area x Total Facility Building Management = Functional Building Management = $ _____
Total Facility Square Feet and Engineering Cost and Engineering Cost

Per Unit: Functional Building Mgt./Engineering Cost = $ _____
Total Number of Units

3. Total Direct and Indirect Costs: $ _____
(Total of 1b+1c+2a+2b+2c+2d)

4. VA Central Office Administrative Costs

Percentage Factor

Building Depreciation	1.0%
VA Central Office Medical Administrative Expense	1.1%
Interest Expense (interest on net capital investment)	10.0%

NOTE: A 10 percent average rate on Total Interest Bearing Debt is used for this analysis.

Total:	12.1%

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Total Direct/Indirect Costs (Number 3. x Percentage Factor) = $ _____

5. Total Unit Cost/Procedure: $ _____
(Total 3 + 4)

6. Grand Total: $ _____
Total Unit Cost x Number of Procedures)

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Transmittal Sheets for M-1, Part I, Chapter 34

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Veterans Health Administration
Department of Veterans Affairs
Washington, DC 20420

March 11, 1993

1. Transmitted is new chapter to Department of Veterans Affairs, Veterans Health Administration Manual M-1, "Operations," Part I, "Medical Administration," Chapter 34, "Medical Sharing," Section I, "Contracting for Scarce Medical Specialist Services."

2. The purpose of this new chapter is to remove section II from M-1, part I, chapter 1, and creating chapter 34 with projected plans of placing all the sharing issues into its own chapter.

3. Principal issues are:

a. Paragraph 34.01f: New paragraph on conflict of interest.

b. Paragraph 34.02: Clarification of the role of the contracting officer in negotiations.

c. Paragraph 34.02c: Expanded requirements for justification of contracts.

d. Paragraph 34.02f: Requirements for cost or pricing analyses or audit.

e. Paragraph 34.02h: New policy on payment for on-call or standby services.

f. Paragraph 34.02i-j: New policy on research, education or other services in contracts.

g. Paragraph 34.02n: Expanded requirements for submission of contracts for VA Central Office review.

i. Paragraph 34.04: New paragraph on requirements for contract performance monitoring.

3. Filing Instructions

Remove pages	Insert pages
v through vi	v through vi
	34-i through 34-13
	34A-1 through 34A-3

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M-1, Part I July 14, 1993
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4. RESCISSIONS: Partial rescission of M-1, part I, chapter 1, delete Section II, Contracting for Scarce Medial Specialist Services. VHA Directive 10-92-079 is rescinded.

3/11/93 signed by

James W. Holsinger, Jr., M.D.
Under Secretary for Health

Distribution: RPC: 1137 is assigned

Printing Date: 3/93

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Department of Veterans Affairs
Veterans Health Administration
Washington, DC 20420

M-1, Part I
Chapter 34
Change 1

July 14, 1993

1. Transmitted is a change to Department of Veterans Affairs, Veterans Health Administration Manual M-1, "Operations," Part I, Chapter 34, "Management and Operational Activities," Section II, "Sharing Specialized Medical Resources, Facilities, Equipment and Personnel."

2. Principal change is the addition of Section II, "Sharing Specialized Medical Resources, Facilities, Equipment and Personnel." This includes:

a. Expanded requirements for justification of contracts.

b. Clarification of the role of the contracting officer in negotiations.

c. New paragraph on conflict of interest.

d. New policy on research and education services in contracts.

e. Requirements for cost or pricing analyses or audit.

f. Expanded requirements for submission of contracts for VA Central Office review.

g. New paragraph on requirements for contract performance monitoring.

h. New policy and guidance on the Annual Sharing Program Report to Congress.

i. Deletion of subparagraph 34.03(f), and renumbering of paragraph 34.03.

3. Filing Instructions

Remove pages	Insert pages
34-i through 34-ii	34-i through 34-iii
34-9 through 34-11	34-9 through 34-28
34A-1 through 34A-4	34A-1 through 34F-2

4. RESCISSIONS: VHA Directive 10-92-114, and Program Guide G-12, M-1, Part I, are rescinded. Partial rescission of M-1, Part I, Chapter 1, delete Section I.

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July 14, 1993

James W. Holsinger, Jr., M.D.
Under Secretary for Health

Distribution: RPC 1137
FD

Printing Date: 7/93

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M-1, Part I July 14, 1993
Chapter 34
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Department of Veterans Affairs
Veterans Health Administration
Washington, DC 20420

M-1, Part I
Chapter 34
Change 2

October 6, 1993

1. Transmitted is a change to Department of Veterans Affairs, Veterans Health Administration Manual M-1, "Operations," Part I, "Medical Administration Activities," Chapter 34, "Medical Sharing," Section III, "Guidance on Requests for Interim Contract Authority Under 38 U.S.C. § 8153 and 38 U.S.C. § 7409."

2. Principal change is the addition of Section III, "Guidance on Requests for Interim Contract Authority Under 38 U.S.C. § 8153 and 38 U.S.C. § 7409." This includes:

a. Paragraph 34.20: Defines mandates for new contracts.

b. Paragraph 34.21: Defines mandates for interim contracts.

3. Filing Instructions

Remove pages	Insert pages
34-i through 34-ii	34-i through 34-ii
	34-29 through 34-31

4. RESCISSIONS: None.

S/ 10/6/93 by Dennis Smith for
John T. Farrar, M.D.
Acting Under Secretary for Health

Distribution: RPC 1137
FD

Printing Date: 10/93

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